IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5287 of 2001

with

CIVIL APPLICATION NO.11 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NEW INDIA ASSURANCE CO. LTD.

Versus

JIVABHAI MAKNABHAI VANKER

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Appearance:

MR SANDIP C SHAH for Petitioner No. 1

..... for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 26/03/2004

ORAL JUDGEMENT

1. This is an appeal by the Insurance Company under

Section 173 of the Motor Vehicles Act, 1988, against the award dated February 12, 2001, passed by the Motor Accident Claims Tribunal,(Auxi.) Sabarkantha at Himatnagar, on an application Exh.3 under Section 140 of the Motor Vehicles Act, 1988, in M.A.C.P. No.298 of 1998. The learned counsel for the appellant submits that the appeal may be disposed of by passing the same order as was made in a similar case by the Division Bench of this Court in First Appeal No.2573 of 2001 on 13.6.2001.

2. The award under Section 140 is in the nature of an interim award which is subject to adjustment against the final award, which may be passed in the main claim petition being M.A.C.P. No.298 of 1998, pending before the Motor Accident Claims Tribunal (Auxi.) Sabarkantha at Himatnagar. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Company Limited Vs. Hansrajbhai V. Kodala, reported in 2001 (4) JT 477.

3. In view of this, there is no reason to interfere at this stage and no useful purpose would be served by admitting the present appeal.

4. The original claimants shall, however, file an undertaking before the Tribunal within four weeks of the service of this order on the claimants to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

5. On the said undertaking being filed, 30% of the amount awarded shall be permitted to be withdrawn by the claimants without furnishing security. The rest of the amount shall be deposited in a Cumulative Fixed Deposit in any nationalised bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

6. Subject to the observations and directions hereinabove, the above appeal is dismissed.

7. The amount of Rs.12,500/-, deposited by the appellant in this Court is directed to be transmitted to the Tribunal forthwith.

8. In view of the order passed in the First Appeal, Civil Application No.11 of 2002 would not survive and is disposed of accordingly.

( M.H.Kadri, J. )

*mithabhai